

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**STEVE MEYER and  
MEYER BROTHERS, an Iowa General  
Partnership**  
Facility ID#- 64288- Ida County, IA

ADMINISTRATIVE CONSENT ORDER  
NO. 2007-AFO- **35**

TO: Steve Meyer  
Meyer Brothers  
5273 120<sup>th</sup> Street  
Holstein, IA 51025

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Steve Meyer and Meyer Brothers for the purpose of resolving an issue pertaining to a manure discharge from a permitted open feedlot that caused a water quality violation. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jeff Prier, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand, Suite E17  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and Iowa

2007-11-06 15:33:10

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: STEVE MEYER and MEYER BROTHERS

Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Meyer Brothers, an Iowa General Partnership, owns an open cattle feedlot located in the SW ¼ of the SW ¼ of Section 28, Griggs Township, Ida County, Iowa. The feedlot is operated by Steve Meyer. The feedlot has a National Pollutant Discharge Elimination System (NPDES) permit and is permitted for a capacity of 2,500 head. The feedlot has a construction permit for the construction of three earthen settled open feedlot effluent basins. To date, the construction of the basins has not been completed.

2. Ludvingson Land and Cattle previously owned the feedlot, and Don Ludvingson registered the open lot with the Iowa Plan. The open lot onsite assessment was conducted by Ken Hesselius, DNR Field Office 3, on March 6, 2002. Mr. Ludvingson signed a Statement of Intent on April 10, 2003. The Statement of Intent indicated the feedlot would remain below 1,000 head. On February 1, 2005, ownership of the feedlot was transferred to Meyer Brothers.

3. On August 9, 2005, Curry-Wille & Associates Engineering submitted a Plan of Action, including a NPDES permit application, on behalf of Meyer Brothers. The application also included a compliance schedule indicating the Final Design Documents for the construction permit would be submitted by September 15, 2005.

4. On August 18, 2005, Field Office 3 sent a Plan of Action approval letter. The letter also stated the facility could not expand over 1,000 head until a construction permit was issued, controls were installed, and an approval to populate was issued by the DNR.

5. On December 8, 2006, DNR issued Meyer Brothers NPDES permit #2-47-00-0-09. Section I of the permit requires that all runoff from the facility be contained, unless a 25-year- 24 hour storm event causes the discharge.

6. On January 18, 2006, Field Office 3 received a complaint about runoff from the Meyer Brothers' feedlot. On February 1, 2006, DNR Field Office 3 investigated the complaint. No manure solids were observed in the stream. DNR Field Office 3 recommended that Meyer Brothers scrape the solids and properly land apply the solids. It was also noted that the feedlot was at 1,400 head on the day of the inspection.

7. On February 6, 2006, Curry-Wille & Associates Engineering submitted a construction permit application and design manual on behalf of the Meyer Brothers for the feedlot.

8. On February 8, 2006, Meyer Brothers was issued a Stormwater Permit for construction of the basins.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: STEVE MEYER and MEYER BROTHERS

9. On March 30, 2006, DNR Field Office 3 received a complaint alleging manure from the Meyer Brothers' feedlot was running into a tributary of Ashton Creek. DNR Field Office 3 confirmed that the facility was in the process of obtaining a construction permit for the facility.

10. On September 13, 2006, DNR issued a construction permit for three earthen settled open feedlot effluent basins to serve the existing feedlot.

11. On February 17, 2007, Field Office 3 sent a letter informing the facility of the NPDES quarterly monitoring requirements. The letter reminded the facility that the quarterly reports must be submitted to the field office on April 10, July 10, October 10 and January 1 and an annual report must be submitted to the field office by January 10 of the following year. The Nutrient Management Plan (NMP) for the facility was to be submitted to DNR Field Office 3 by May 31, 2007, and the plan was to be implemented at the facility by July 31, 2007. Meyer Brothers has submitted the quarterly report due April 10, but has not yet submitted the quarterly report due on July 10. DNR received the NMP on June 28, 2007.

12. On April 26, 2007, Tom Roos and Jeff Prier, environmental specialists for DNR Field Office 3, visited the Meyer Brothers' feedlot to check for compliance and to determine if manure runoff was entering Ashton Creek. On the two days prior to the visit, approximately 2.60 inches of rain had fallen in the area. The amounts are below the 25-year, 24-hour storm event (approximately 5 inches) noted in the NPDES permit. Mr. Roos and Mr. Prier observed manure running off the south pens of the Meyer Brothers' feedlot into the road ditch and then discharging into Ashton Creek. Mr. Roos and Mr. Prier observed suspended solids in Ashton Creek, and settleable solids on the stream bank. During the visit, it appeared no controls, permanent or temporary, had been constructed on the south side of the facility. Mr. Roos and Mr. Prier collected laboratory samples from Ashton Creek and took several pictures of the area. The laboratory results are as follows:

Location	Biological Oxygen Demand (BOD)	Ammonia Nitrogen (NH3)	Fecal Coliform
Downstream	10 mg/L	1.5 mg/L	73,000/100mL
Upstream	Less than 2 mg/L	.11 mg/L	520/100mL
Effluent	310 mg/ L	38 mg/ L	2,900,000/ 100mL

13. On May 10, 2007, DNR Field Office 3 issued a Notice of Violation letter to Meyer Brothers in care of Steve Meyer. The letter cited the following violations at the Meyer Brothers' feedlot: 1) a manure discharge in violation of the facility's NPDES permit; 2) manure runoff that caused a water quality violation; and 3) failing to notify the DNR of a manure release. The letter informed Mr. Meyer the matter was being referred for an enforcement action, including a monetary penalty.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: STEVE MEYER and MEYER BROTHERS

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. DNR Field Office 3 found evidence of a discharge of untreated pollutants into a water of the state. Manure was running off the south pens into the road ditch and then discharging to Ashton Creek. The above-facts indicate a violation of this provision

2. 567 IAC 61.3(2) "c" states that waters of the state shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor, or other aesthetically objectionable conditions. Lab analysis results of water samples collected during the investigation indicated the presence of animal wastes. The above-facts indicate a violation of this provision.

3. 567 IAC 65.101(2) "a" states an open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if any of the following apply: for an open feedlot operation that houses cattle, other than veal calves, the operation is designed, constructed, operated, and maintained to comply with the requirements of 567 IAC 62.4(12) and do not discharge manure, process wastewater, settleable solids, or open feedlot effluent resulting from precipitation events less than or equal to the 25-year, 24-hour precipitation event into any waters of the United States. The aforementioned requirement is also Section I of the NPDES permit #2-47-00-0-09. On April 24 and 25, 2007, rain fell in the area of the facility. However, the precipitation records indicated that the amount of rain fall was below the 25-year, 24-hour storm event. Therefore, Meyer Brothers was not allowed to discharge any feedlot runoff. The above-mentioned facts indicate a violation of the NPDES permit and the aforementioned provision.

4. 567 IAC 65.101(9) "a" states a person handling, storing, transporting, or land applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify DNR of the occurrence of the release as soon as possible but not later than six hours after the onset or discovery of the release. Section VII of NPDES permit #2-47-00-0-09 requires that a release shall be reported in accordance with 567 IAC 65.100 and 65.101(9). DNR was not notified of the manure release. The above-mentioned facts indicate a violation of the NPDES permit and the aforementioned provision.

**V. ORDER**

THEREFORE, the DNR orders and Steve Meyer and Meyer Brothers agree to do the following:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: STEVE MEYER and MEYER BROTHERS

1. Complete basin construction and be in compliance with all the recordkeeping requirements of the NPDES permit and Nutrient Management Plan by November 1, 2007;
2. Report all discharges from the facility that reach a water of the state;
3. Immediately depopulate any pen that does not have approved controls in place; and
4. Pay a penalty of \$7,500.00 in accordance with the following payment schedule:  
\$937.50 due October 1, 2007;                      \$937.50 due October 1, 2008;  
\$937.50 due January 1, 2008;                      \$937.50 due January 1, 2009;  
\$937.50 due April 1, 2008;                      \$937.50 due April 1, 2009; and  
\$937.50 due July 1, 2008;                      \$937.50 due July 1, 2009.  
If any of the said payments are not received on schedule, the remaining penalty shall be due immediately.

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191, and Iowa Code 459A.502, authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$7,500.00. The administrative penalty is determined as follows:

Economic Benefit – Failure to properly contain all manure has allowed Meyer Brothers to save time and money. By failing to install the proper manure controls prior to the discharge, Meyer Brothers has gained an economic advantage over producers who installed the proper manure controls. Therefore, \$500.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Multiple rule or statutory provisions were violated including discharge to water of the state, failure to report a discharge, and violation of water quality standards. The violations threaten the integrity of the water quality program. Therefore, \$2,500.00 is assessed for the discharge to a water of

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: STEVE MEYER and MEYER BROTHERS

the state violations referenced in Section IV, Paragraphs 1 and 3 above; \$1,500.00 for the general water quality violation referenced in Section IV, Paragraph 2 above; and \$500.00 for the failure to report a discharge referenced in Section IV, Paragraph 4 above for a total of \$4,500.00 for this factor.

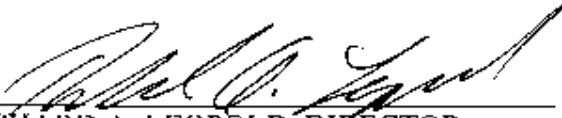
Culpability All feedlot operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. The facility discharged to Ashton Creek during precipitation events. The facility was issued a construction permit in September 2006. That left several months of construction before winter. No temporary controls were installed on the south pens. Based on the above considerations, \$2,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

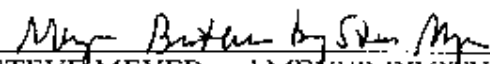
This administrative consent order is entered into knowingly and with the consent of Mr. Meyer and Meyer Brothers. For that reason Mr. Meyer and Meyer Brothers waive the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 1 day of  
November, 2007.

  
\_\_\_\_\_  
STEVE MEYER and MEYER BROTHERS

Dated this 10<sup>th</sup> day of  
October, 2007.

Facility #64288; Kelli Book; Field Office 3; Gene Tinker; EPA; VIII.B.3, VIII.D.2.d, and VIII.D.3.a